NO. ____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PRINCE GEORGE'S COUNTY, MARYLAND,

PETITIONER

v.

ADA SANDRA KOPF, PERSONAL REPRESENTATIVE
OF THE ESTATE OF ANTHONY JOHN CASELLA,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF ANNE ARUNDEL COUNTY, MARYLAND,

AS AMICUS CURIAE IN SUPPORT OF
PETITIONER

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Anne Arundel County, Maryland, submits this brief as amicus curiae in support of the petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit in Kopf v. Wing, 942 F.2d 265 (4th Cir. 1991). Consent of the

parties is not required pursuant to Supreme Court Rule 37.5.

INTEREST OF THE AMICUS CURIAE

The amicus County urges this Court to grant certiorari and review the decision of the Fourth Circuit because of the extraordinary and unwarranted impact it will have on the ability of local governments to defend against allegations of municipal liability under 42 U.S.C. Section 1983.

FILLER INFORMATION RE AMICUS

Since it is a "person" subject to liability under Section 1983, local governments, including the amicus County, are directly affected by the decision of the Fourth Circuit. In the context of an excessive force claim, the Court's decision sanctions the use of statistics showing the numbers and

dispositions of complaints against police officers for the use of force as a means of establishing, prima facie, the existence of a municipal policy or custom condoning the use of excessive force. By sanctioning the use of statistics alone as a means of establishing municipal liability, regardless of the contention which such statistics arose and the circumstances giving rise to each complaint, the decision of the Fourth Circuit makes it virtually impossible for trial courts to resolve the issue of municipal liability pre-trial, and will require the trial courts to conduct lengthy trials during which the validity of each previous complaint against a municipality's officers must be debated and adjudicated. Plenary review by this

Court is necessary to restore the logical approach to the determination of municipal liability and to see that the purposes underlying Fed. Rule Civ. P. 56 are enforced. The amici parties that will be harmed by the decision of the Fourth Circuit have a substantial and direct stake in the present case, and respectfully request this court to grant certiorari.

ARGUMENT

The decision of the Fourth Circuit Court of Appeals, reversing the trial Court's grant of summary judgment violates the principles of Fed. Rule Civ. P. 56. As this Court explained in Celotex Corp. v. Catrett, 477 U.S. 317 (1986), summary judgment is an integral part of the Federal Rules which are designed to "secure the just, speedy and

inexpensive determination of every action. Fed. Rule Civ. P. 1." Id. at 327.

It is well established that the party opposing the motion for summary judgment is entitled to all favorable inferences which can be drawn from the evidence. Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-159 (1970). In this case, however, the Fourth Circuit has allowed illogical and impermissible inferences to be drawn from the evidence proffered by Plaintiff in support of its claim against the County.

A municipality may not be held liable under 42 U.S.C. 1983 under a theory of respondeat superior. Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978). It can only be held liable as a "person" if it

exhibits "deliberate indifference" to constitutional rights by failing to stop a widespread pattern of abuse. City of Canton, Ohio v. Harris, ___ U.S. ___, 109 S.Ct. 1197 (1989).

The Fourth Circuit's decision would allow a Plaintiff to go forward with an extended and costly trial which cannot result in municipal liability as a matter of law. The written complaints which were in the record before that Court are inadmissible to prove the allegations in the complaint, they are only admissible to prove that complaints were filed. Even the Fourth Circuit recognizes that Plaintiff must prove "the numerous instances of excessive force she alleges" (Petition, APX. 17). Any sizeable municipality in the United States which is sued on a Monell theory

of condoning excessive force by police officers could be required to confront and defend between scores and hundreds of individual complaints as a part of its defense to every suit filed against it.

The decision will result in a trial which is a series of mini-trials of each complaint. Plaintiff does not offer any evidence of the use of excessive force other than the complaints themselves and there was no evidence in the record before the Fourth Circuit that any of the complaints was not thoroughly investigated or appropriately resolved. Therefore, the case should not be allowed to go forward to trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). In addition to the evidentiary problem, the proposed procedure suffers from the

same defects this Court found to exist in the District Court trials in Rizzo v. Goode, 423 U.S. 362 (1976). This Court stated

> The findings of fact made by the District Court at the conclusion of these two parallel trials ... disclose a central paradox which permeates that court's legal conclusions. Individual police officers not named as parties to the action were found to have violated the constitutional rights of particular individuals, only a few of whom were parties plaintiff.

Id. at 371. If the case proceeds to trial on this basis, and the allegation of certain complaints are "proved" to be true, this would not arise to the level of a pattern of the use of excessive force or the condemnation of it by the County. If statistical evidence is all that is required to go forward to trial against a municipality, then no system

for investigating and adjudicating complaints could be designed by a municipality to deter use of excessive force by police officers which would satisfy Constitutional requirements. Since complaints are encouraged by the defendant County this will cause an enormous increase in the workload of the trial Court because even frivolous complaints would take on significance. The Fourth Circuit's decision requires numerous individual officers to justify their actions in a trial in which they are not the defendants and the complainants are not the plaintiffs. And if at a trial some number of complaints were found to have merit, the trial Courts would be without guidance as to any number or percentage of meritorious complaints which is

necessary to establish a viable claim, as there must be more than isolated instances of excessive force to prove a pattern. City of Oklahoma City v. Tuttle, 471 U.S. 808, 824 (1985).

Secondly, there is no evidence that the process for handling complaints by defendant County is inadequate. Both the District Court and the Court of Appeals found the County's policy to be constitutionally valid on its face. The statistic that plaintiff proffers to prove the inadequacy of the system is that a smaller percentage of excessive force complaints are sustained than other disciplinary complaints against police officers. This statistic is meaningless. All complaints of excessive force are closely investigated by Prince George's County in compliance

with State law. Even if Plaintiff were capable of proving that a small number of incidents occurred in which excessive force was used and that the officers were not disciplined, this is not enough to establish a pattern so widespread that the officials had constructive knowledge of it. At most it would arise to negligent administration, not deliberate indifference. The test for municipal liability under Section 1983 is a stringent one. The District Court was correct in ruling that Plaintiff's evidence was insufficient as a matter of law to raise an issue of material fact concerning the County's liability under Section 1983.

law to raise an issue of material fact concerning the County's liability under Section 1983.

CONCLUSION

For the foregoing reasons, the Court should issue a writ of certiorari to review the decision of the Fourth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of this Petition were mailed first-class, postage prepaid on this 2nd day of January, 1991, to Michael O.

Connaughton, Esquire, Room 5121, Office of Law, County Administration Building, Upper Marlboro, Maryland 20772; and to Terrell N. Roberts, III, Esquire, 6801 Kenilworth Avenue, Suite 202, Berkshire Building, Riverdale, Maryland 20737.

John F. Breads, Jr.